

## Message Text

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C O N F I D E N T I A L SANTIAGO 3188

EO 11652: GDS

TAGS: CI, PINT

SUBJ: LAWYERS DISCUSS HUMAN RIGHTS

1. SUMMARY. INDICATIONS EXIST THAT INCREASINGLY SIGNIFICANT PORTION OF CHILEAN LEGAL PROFESSION BECOMING CONCERNED ABOUT HUMAN RIGHTS ISSUES. RECENT ANNUAL MEETING OF CHILEAN BAR ASSOCIATION PROVIDED OPPORTUNITY FOR THOROUGH AIRING OF CRITICISM OF CURRENT JURIDICAL SCENE. GOVT APPARENTLY CONTEMPLATING SOME CHANGES IN PROCEDURES INCLUDING GRANTING SUPREME COURT AUTHORITY TO REVIEW WARTIME MILITARY TRIBUNAL DECISIONS. END SUMMARY.

2. RECENT ANNUAL ASSEMBLY OF COLEGIO DE ABOGADOS (BAR ASSOCIATION) PROVIDED OPPORTUNITY FOR ARTICULATE CRITICS OF CURRENT GOC LEGAL POLICIES TO STATE CASE TO THEIR PEERS. OF PARTICULAR INTEREST WAS DOCUMENT PRESENTED TO COLEGIO BY NOTED ATTORNEY EUGENIO VELASCO (FORMER PIR SENATORIAL CANDIDATE) WHICH, ACCORDING TO JAIME CASTILLO, PDC MASTER IDEOLOGUE AND DEFENSE ATTORNEY, HE HAD HELPED TO WRITE.

3. STATEMENT NOTES COLEGIO'S HISTORY OF CRITICIZING ALLENDE GOVT'S ILLEGAL PRACTICES, RECOGNIZES COUNTRY HAS EXPERIENCED  
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COLLECTIVE TRAUMA AND IS STILL LIVING IN TIME OF EMERGENCY.

NEVERTHELESS, EVIDENCE EXISTS WHICH PROVIES WITH ABSOLUTE CERTAINTY THAT "DAY BY DAY" CONSTITUTIONAL AND HUMAN RIGHTS ARE BEING VIOLATED IN CHILE. VIOLATIONS INCLUDE ILLEGAL DETENTION, MISTREATMENT AND TORTURE OF PRISONERS, MISUSE OF CONFESSIONS, DISTORTION OF CODE OF MILITARY JUSTICE AND MISINTERPRETATION OF CONCEPTS SUCH AS "TIME OF WAR," "STATE OF SIEGE," AND "ENEMY." SUCH VIOLATIONS ARE CONDUCIVE TO ISSUANCE OF "SENTENCES LACKING JURIDICAL FOUNDATION AND, AT TIMES, EVEN THE MOST MINIMAL AMOUNT OF HUMAN COMPASSION."

4. DOCUMENT CRITICIZES ATTITUDE OF JUDICIAL AUTHORITIES AND THEIR UNWILLINGNESS TO IMPOSE ANY FORM OF MEANINGFUL CONTROL OVER LEGAL PROCEDURES, E.G. NEGATION OF HABEAS CORPUS REQUESTS. IT CALLS UPON LAWYERS TO DEVELOP REFORMS FOR PROPOSAL TO MINISTRY OF JUSTICE FOR MODIFICATION OF JURIDICAL PROCEDURES IN "TIME OF WAR" AND FOR GRANTING POWER TO JUDICIAL AUTHORITIES TO REVIEW SENTENCES OF WARTIME MILITARY TRIBUNALS UPON APPEAL.

5. SHORTLY AFTER MEETING, CASTILLO TOLD EMBOFF THAT COLEGIO HAD "ACCEPTED" VELASCO'S STATEMENT. COLEGIO PRESIDENT ALEJANDRO SILVA CLARIFIED TO EMBOFF JUNE 3 THAT ASSEMBLY HAD BEEN UNABLE VOTE ON VELASCO'S RESOLUTION AT ANNUAL MEETING BECAUSE HE HAD NOT PRESENTED IT 24 HOURS IN ADVANCE FOR PLACEMENT ON FORMAL AGENDA. NEVERTHELESS, COUNCIL OF THE COLEGIO HAS ACCEPTED IT FOR FURTHER STUDY.

6. IN ANNUAL SPEECH TO COLEGIO, SILVA HAD NOTED CRITICISM OF CURRENT LEGAL PRACTICES, STATED THAT GOVT WANTS LEGAL PROFESSION TO BE TRUE TO ITS IDEALS AND OPENLY CRITICAL IF NECESSARY. HE ALSO ARGUED FOR NECESSITY OF GIVING FULL FACILITIES TO LAWYERS TO CARRY OUT THEIR PROFESSION AND TO INSURE THAT NO ONE IS CONDEMNED FOR CRIMES DEFINED AFTER COMMISSION OR ON THE BASIS OF ONLY ONE CONFESSION, EVEN IF FREELY OBTAINED.

7. IN PRIVATE CONVERSATION WITH EMBOFF, SILVA WAS FRANK IN NOTING THAT HUMAN RIGHTS PICTURE FAR FROM PERFECT AND THAT HE AGREES WITH MOST OF VELASCO'S CRITICISMS. APPARENTLY STUNG BY DOMESTIC AND INTERNATIONAL CRITICISM, SILVA ARGUED THAT HE HAS GIVEN FULL AIRING TO PROTESTS SUCH AS THAT PRESENTED BY VELASCO AND HAS ACTIVELY SOUGHT GOVT SUPPORT FOR REFORM OF LEGAL CONFIDENTIAL

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PROCEDURES.

8. HE STATED THAT MINJUSTICE PRIETO HAS BEEN HELPFUL AND IN FACT HAD TALKED WITH VELASCO SHORTLY AFTER COLEGIO'S ANNUAL MEETING. ON SPECIFIC ISSUES SILVA NOTED HIS BELIEF THAT SUPREME COURT SHOULD HAVE AUTHORITY TO REVIEW DECISIONS OF WARTIME MILITARY TRIBUNALS AND THAT, ACCORDING TO PRIETO, GOVT IS SERIOUSLY CONSIDERING BEST MANNER TO EFFECT THIS CHANGE.

SILVA FELT IT TO BE MORE PROBABLE THAT CHANGE WILL TAKE PLACE VIA AMENDMENT OF CODE OF MILITARY JUSTICE RATHER THAN BY ABROGATION OF STATE OF WAR, WHICH WOULD IN EFFECT OBLIGATE WARTIME MILITARY TRIBUNALS TO CEASE FUNCTIONING.

9. HE STATED THAT CONSTITUTION'S STATE OF SIEGE PROVISION GIVES GOVT RIGHT TO INCARCERATE AND TRANSFER WITHIN COUNTRY INDIVIDUALS WITHOUT FORMAL CHARGES BUT, AS HA HAS ARGUED IN LETTERS TO MIN JUSTICE PRIETO WHICH HE SHOWED EMBOFF, THIS AUTHORITY SHOULD NOT CONSTITUTE VIOLATION OF DETAINEES' CONSTITUTIONAL RIGHT TO LEGAL DEFENSE INCLUDING ABILITY TO MEET WITH COUNSEL. GOVT, ACCORDING TO SILVA, DOES NOT HAVE LEGAL AUTHORITY TO MAINTAIN PRISONER INCOMMUNICADO INDEFINITELY. SILVA REPORTS THAT WHILE PRIETO HAS RESPONDED SYMPATHETICALLY TO THIS POINT, ISSUE STILL UNDER REVIEW BY MIN INTERIOR. SILVA STATED HIS SUSPICION THAT GOVT STILL ARRESTING PEOPLE WITHOUT PREVIOUSLY ISSUED ARREST WARRANTS. HE DID NOT OFFER COMMENTS ON TORTURE BUT SIMPLY STATED THAT IT WAS PRIME CONCERN OF COLEGIO.

10. ONE SPECIFIC ACTION COLEGIO DID TAKE AT ANNUAL MEETING WAS TO CENSOR APPRENTICE LAWYER HECTOR BASOALTO FOR HIS ACTIONS AT RECENT FACH TRIAL (SANTIAGO 2375), WHICH RESULTING IN HIS BEING SUSPENDED FROM THOSE PROCEEDINGS. BASOALTO WAS PENALIZED WITH CANCELLATION OF VALIDITY OF HIS SIX-MONTH INTERNSHIP AS CRIMINAL LAWYER. HE WILL HAVE TO INITIATE INTERNSHIP AGAIN IN ANOTHER BRANCH OF LAW, BUT WILL BE ABLE TO PRACTICE CRIMINAL LAW ONCE INTERNSHIP COMPLETED.

11. COMMENT. STATEMENT PRESENTED BY VELASCO NO DOUBT OBJECTIONABLE TO MANY CONSERVATIVE LAWYERS AND PRESUMABLY MOST MEMBERS OF THE CHILEAN JUDICIARY. NEVERTHELESS, AS SILVA'S COMMENTS INDICATE, THERE SEEMS TO BE A GROWING SENSE OF AWARENESS ON THE PART OF MANY ATTORNEYS WHO BY NO MEANS CAN BE CONFIDENTIAL

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SIDERED LIBERAL (SUCH AS JAIME GUZMAN, SANTIAGO 2282) THAT CURRENT LEGAL PROCEDURES FALL FAR SHORT OF ACCEPTED INTERNATIONAL JURIDICAL NORMS AND TEND TO BESMIRCH IMAGE OF CHILEAN LEGAL PROFESSION. AT THIS TIME THERE SEEMS TO BE NO FIRM INDICATION THAT THIS ATTITUDE IS A MAJORITARIAN ONE OR THAT IT WILL NECESSARILY BEAR FRUIT IN TERMS OF CONCRETE GOVT ACTION. HOWEVER, IT DOES SEEM SAFE TO SAY THAT THE CRITICISM IS NO LONGER SIMPLY THE VIEW OF A SMALL GROUP OF LIBERAL LAWYERS AND THAT CHANGE IN LEGAL PROCEDURES PARTICULARLY IN REFERENCE TO REVIEW OF WARTIME MILITARY TRIBUNAL DECISIONS BY CIVIL COURTS IS NOW A DISTINCT, IF STILL DISTANT, POSSIBILITY.  
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